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KAISER FOUNDATION HEALTH PLAN, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

KAISER FOUNDATION HEALTH
PLAN, INC. a foreign non-profit
corporation,

Plaintiff,

v.

Case No. _____

**COMPLAINT FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF; EXHIBIT A**
[Caption continued on next page]

THE QUEEN’S MEDICAL CENTER,
NORTH HAWAII COMMUNITY
HOSPITAL, INC., MOLOKAI
GENERAL HOSPITAL, and DOES 1-
10, inclusive,

Defendants.

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

1. The Queen’s Medical Center, North Hawaii Community Hospital, and Molokai General Hospital (collectively “Queens Health System Hospitals” or “QHS”) operate numerous hospitals in the State of Hawai‘i that provide emergency medical services to the public. QHS has notified Kaiser Foundation Health Plan, Inc. (“Kaiser”) that it intends to directly bill Kaiser members who receive emergency medical services at their facilities for amounts that they are not legally obligated to pay. Further, QHS disclosed that it intends to bill Kaiser—and then Kaiser’s commercial members—100 percent of its full billed charges for all services, including emergency services. QHS’ threatened actions—which it claims it will retroactively and immediately implement—violate multiple Hawai‘i and federal statutes as well as the common law, including laws requiring:

- QHS to hold Kaiser members harmless and refrain from billing them for any emergency service; and

- QHS to accept less than full billed charges for emergency services rendered to Kaiser members.

Kaiser, therefore, seeks a judgment declaring that (1) QHS does not have the legal right to directly bill Kaiser members for emergency services (except for deductibles and copayments) and (2) that Kaiser has to pay only the reasonable value of QHS emergency services rendered to its commercial members, which is not necessarily 100 percent of QHS' billed charges. Kaiser also seeks injunctive relief on the same grounds.

PARTIES

2. Kaiser Foundation Health Plan, Inc. is a nonprofit health plan incorporated in the state of California. Kaiser's principal place of business, and the location of its high level officers, is One Kaiser Plaza, Oakland, California 94612. Kaiser is authorized to do business in the State of Hawai'i, and has operated as one of the largest health plans in Hawai'i for 60 years. Kaiser currently serves more than 250,000 members in Hawai'i, with operations on Oahu, Maui, Hawai'i and Kauai. With the other entities that make up the Kaiser Permanente integrated care model, Kaiser employs nearly 5,000 people in the State of Hawai'i.

3. The Queen's Medical Center (including The Queen's Medical Center – West Oahu) is, and was at all relevant times, two medical care facilities engaged in the provision of healthcare services on the island of Oahu, State of Hawai'i. The

Queen's Medical Center operates facilities that provide emergency services at 1301 Punchbowl Street, Honolulu and 91-2141 Fort Weaver Road, Ewa Beach. The Queen's Medical Center is a nonprofit corporation incorporated under the laws of the State of Hawai'i, with its principal place of business located in Honolulu, Hawai'i.

4. North Hawaii Community Hospital, Inc. is, and was at all relevant times, a medical care facility engaged in the provision of healthcare services on the island of Hawai'i, State of Hawai'i. North Hawaii Community Hospital, Inc. is a nonprofit corporation incorporated under the laws of and maintains a principal place of business in the State of Hawai'i.

5. Molokai General Hospital is, and was at all relevant times, a medical care facility engaged in the provision of healthcare services on the island of Molokai, State of Hawai'i. Molokai General Hospital is a nonprofit corporation incorporated under the laws of and maintains a principal place of business in the State of Hawai'i.

6. Kaiser is informed and believes, and on that ground alleges, that Queen's Medical Center, North Hawaii Community Hospital, Inc., and Molokai General Hospital are under common ownership and control, and collectively refer to themselves as Queens Health System.

7. DOES 1-10 are sued herein under fictitious names for the reason that

their true names, identifies and/or responsibilities to Kaiser are currently unknown except that they were in some manner involved in the conduct alleged herein.

Kaiser prays for leave to amend this Complaint when the true names, capacities, and/or responsibilities of DOES 1-10 are ascertained.

JURISDICTION AND VENUE

8. Kaiser brings this action under 28 U.S.C. § 1332 because the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000. Further, jurisdiction is proper under 28 U.S.C. § 2202 because this case presents an actual controversy in which Kaiser seeks a declaratory judgment. Jurisdiction also exists under 28 U.S.C. § 1337 because this case is a proceeding “arising under” one or more “Act[s] of Congress regulating commerce.”

9. Venue is proper in this District under 28 U.S.C. § 1391(b) because each of the entities comprising QHS is a resident of, and maintains its principal place of business in, the District. Further, the activities giving rise to this action occurred in this District.

FACTUAL BACKGROUND

10. Kaiser is a nonprofit corporation that arranges for the provision of healthcare services and benefits to its members through the Kaiser Permanente integrated care delivery model, which includes Kaiser Foundation Hospitals and Hawaii Permanente Medical Group. In a time of ever-increasing healthcare costs

and rampant charges for life-saving services, Kaiser Permanente strives to provide high-quality healthcare at an affordable price. By doing so, Kaiser is able to offer affordable coverage at a time when more physicians are dropping out of government programs. It is able to offer healthcare to at-risk and underserved populations, including seniors, and by offering millions of dollars in free and discounted care to low-income nonmembers. Kaiser's model and mission also allow it to give back millions to support community health, including care for the housing-insecure population.

11. Integral to Kaiser Permanente's model of providing health care is affordability. Kaiser provides many services through direct care, meaning Kaiser itself hires doctors and offers care in Kaiser facilities. Direct care provides Kaiser the ability to control and manage the amount its physicians and its facilities charge for services. Occasionally, Kaiser also contracts with outside physician groups and hospitals for various services, usually to provide services it cannot offer in a particular geography, to meet additional needs for high-demand services, and to protect its members when they require service at a non-Kaiser facility. The combination of direct services and contracted services make up Kaiser's network. Like other Health Maintenance Organizations ("HMOs") that have a network of providers, Kaiser typically requires its members seeking health care treatment to obtain the services at a facility in its network.

12. Like most states, Hawai‘i regulates HMOs, including the types of services HMOs must offer and the adequacy (scope) of the network HMOs set up.¹ One key regulation involves the provision of emergency services. While Hawai‘i law generally allows HMOs to restrict their members to only seek treatment within the network the HMO establishes, Hawai‘i takes the opposite approach for emergency services. Multiple statutes, including Haw. Rev. Stat. §§ 431:26-103(a)(2), 432D-1, and 432D-14, require plans like Kaiser to provide coverage for emergency medical services no matter where the member seeks treatment. This includes emergency services provided at out-of-network hospitals.

13. The federal government, through the Affordable Care Act, also requires health plans and insurance carriers to cover emergency services provided to their members, even if the services are provided by an out-of-network facility. In fact, three different federal agencies require carriers to provide such services: the Department of Labor (29 CFR 2590.715-2719A), the Department of Health and Human Services (45 CFR 147.138) and the Department of the Treasury (26 CFR 54.9815-2719A).

14. Kaiser not only abides by these emergency services regulations, but advocates for them because its members suffering emergencies need the fastest

¹ Many of these regulations apply not only to HMOs, but all health insurance carriers.

treatment. Kaiser directs all members, including its Hawai‘i members, undergoing a medical emergency to “call 911 or go to the nearest hospital.” And when its members call 911 with emergency symptoms, the question that is asked is “what facility is closest?” not “what facility is in-network?” Kaiser has no control over which emergency room its members present at or which emergency services are provided. Kaiser does not usually even know its members are at an out-of-network emergency room until after the services are provided. Kaiser is still required, however, to provide coverage for those emergency services until the member is stabilized.

QHS is Required to Provide Emergency Services

15. In addition to regulating carriers’ coverage of emergency services, both state and federal law regulate hospitals. Specifically, both governments require hospitals to treat all patients suffering emergency medical symptoms regardless of ability to pay. As this Court pointed out in *Arrington v. Wong*, 19 F. Supp. 2d 1151 (1998), hospitals across the country at one time refused to treat patients suffering from an emergency medical condition, or released them before stabilization, if they did not have insurance through a company that had a contract with the hospital. This concept, called patient “dumping,” placed profit over people and resulted in two-tiered healthcare. Some hospitals exclusively treated the well-insured while the relatively few public hospitals were overcrowded with

people unable to afford treatment. Patient dumping was outlawed for any hospital that decided to accept government insurance (Medicare, Medicaid, etc.) in 1986 through the Emergency Medical Treatment and Active Labor Act (“EMTALA”), 42 U.S.C. § 1395dd. Under EMTALA, hospitals choosing to treat federally insured patients are required to treat any patient that presents with an emergency medical condition until that patient is stabilized, regardless of insurance status or insurance carrier.²

16. QHS has decided to continue to accept government payments, and is therefore subject to EMTALA and Hawai‘i regulation. It must provide emergency medical services to any person who presents at a facility suffering from an emergency medical condition, including Kaiser members, until the patient is stable enough to transfer or release. QHS has provided, and continues to provide, emergency healthcare services to Kaiser members presenting at its facilities. Kaiser is informed and believes, and on that basis alleges, that each year hundreds of Kaiser members present at QHS for emergency services resulting in several millions of dollars in charges.

QHS Is Required to Bill Carriers And Hold Patients Harmless

² Hawai‘i has its own version of the anti-dumping statute through Haw. Code R. 11-93-10. (“An appraisal, advice and initial emergency treatment, shall be rendered to any ill or injured person who requests treatment at a hospital which has an emergency service department.”)

17. While the ACA and EMTALA prescribe the services carriers and hospitals must provide, Hawai‘i law regulates how such services are paid for commercial members. Multiple Hawai‘i statutes require that any hospital that has a contract for services with a patient’s carrier, including QHS, accept the payment listed in the contract as payment in full for the services rendered. *See, e.g.*, Haw. Rev. Stat. §§ 431:206-104 (a)-(e); 432D. These same provisions demand that hospitals seek that payment directly from the carriers. QHS, like all other Hawai‘i hospitals, cannot seek to recover the contract amount directly from the patient, even if the carrier refuses to or cannot pay.

18. These provisions, called “Hold Harmless” or “No Surprise Billing” provisions, are common throughout the United States and restrict hospitals from seeking money from the patients themselves. Hawaii’s approach is very strong; not only does the State have statutes that require hospitals to hold patients harmless for bills, but Hawai‘i Revised Statute § 431:26-104(b) imputes a nonwaivable provision into every carrier-hospital contract prohibiting hospitals from seeking payment from the patients under any circumstances, except standard deductibles and copayments. Importantly, these hold harmless provisions apply regardless of whether a carrier-hospital contract is written or implied. QHS, as a Hawai‘i regulated hospital, is subject to these statutes.

QHS and Kaiser Contracts

19. At various times before May 30, 2019, Kaiser entered contracts with the several QHS facilities for, among other things, emergency services. These contracts terminated on May 30, 2019.

20. As of May 30, 2019, by operation of law, QHS was, and still is, required to treat Kaiser members suffering emergencies after the written contract's termination. Similarly, Kaiser was, and still is, required to provide coverage for all emergency services rendered at QHS. Kaiser acknowledged to QHS that it was going to provide payment for those services, and QHS noted that it expects to receive payment from Kaiser for emergency services rendered to Kaiser members. Kaiser and QHS, therefore, have an implied contract with respect to the provision and payment of emergency medical services.

21. The Hawai'i legislature understood, and referenced, that implied healthcare contracts exist between carriers and hospitals. These implied contracts for health services are regulated the same as express contracts and assume certain terms. With respect to emergency services, these contracts require payment for commercial members according to equitable principles of *quantum meruit*. Kaiser explained this to QHS and promised to pay according to those principles.

22. On June 3, 2019, however, QHS sent Kaiser a letter regarding how it would treat both Kaiser and Kaiser members since the written contracts terminated, a true and correct copy of which is attached as Exhibit A. QHS rejected the

principles of *quantum meruit* and informed Kaiser that it would directly bill Kaiser's commercial plan members receiving emergency services if Kaiser does not pay 100 percent of billed charges, even though Kaiser does not owe that amount under the implied contract.³ QHS also wrote that it would not notify or seek authorization from Kaiser for services provided to its members, even though Kaiser is responsible for the payment of some service but not others. Additionally, QHS told Kaiser the aforementioned policies would be retroactively initiated beginning May 31, 2019.

23. Kaiser asserts QHS' threatened actions, which it represents are already implemented, are contrary to law. Based on these facts, an actual controversy exists between the parties for which Kaiser desires a declaration of rights regarding QHS' (i) intention to directly bill Kaiser members for Kaiser's obligations and for amounts exceeding those obligations, and (ii) rejection of *quantum meruit* and intention to bill at 100 percent of its full billed charges for commercial members. A declaratory judgment is necessary in that Kaiser and QHS have disputes as set forth below.

³ The QHS letter acknowledged that emergency and non-emergency services would be provided to Kaiser Medicare members at Original Medicare rates, and to Medicaid members at Medicaid rates.

CAUSES OF ACTION

COUNT ONE

(Declaratory Relief Regarding Kaiser Members' Obligations)

24. Kaiser re-alleges and incorporates by reference paragraphs 1 through 23 as though fully set forth herein.

25. Under Hawai'i law, including Haw. Rev. Stat. §§ 431:26-104 and 432D, hospitals performing services pursuant to contracts, including *implied contracts*, must hold the patients harmless for any amount owed by their carrier and are prohibited from attempting to collect that amount from the patient. Further, every contract for health services in Hawai'i—written or not—has an imputed, implied, and nonwaivable provision prohibiting providers from billing, charging, or otherwise seeking reimbursement from a patient except for copays and deductibles. Hospitals are also prohibited from attempting to collect more than the contract price.

26. Federal law, 42 U.S.C. § 1395dd, and Hawai'i law, Haw. Code R. 11-93-10, obligate QHS to provide emergency medical services to Kaiser members. Further, by accepting government funding and remaining in operation, QHS agreed to accept these requirements. Pursuant to numerous statutes, including Haw. Rev. Stat. §§ 431:26-103(a)(2) and 432D, Kaiser is obligated to provide its members coverage for emergency services rendered by QHS. Thus, as set forth above, Kaiser and QHS have an implied contract for emergency services.

27. QHS is therefore prohibited from attempting to collect any money from Kaiser members receiving emergency medical treatment apart from deductibles and copayments listed in the member's policy with Kaiser. Notwithstanding this requirement, QHS indicates in no uncertain terms that it intends to seek payments from Kaiser members above and in addition to their deductibles and copayments. This includes amounts Kaiser is obligated to pay and amounts above its obligation.

28. Accordingly, an actual controversy of sufficient immediacy exists between Kaiser and QHS as to whether QHS can attempt to collect payments beyond deductibles and copayments from Kaiser members for emergency medical services rendered at its facilities. Kaiser therefore seeks, and this Court should issue, an order declaring that (1) QHS must hold Kaiser members harmless for any medical bill related to the provision of emergency services, except deductibles and copayments as prescribed in the members' contract with Kaiser, and (2) QHS does not have the right to collect, bill, or otherwise obtain payment from Kaiser members for any medical bill related to the provision of emergency services, except deductibles and copayments as prescribed in the members' contract with Kaiser.

COUNT TWO
(Injunctive Relief Regarding Kaiser Members' Obligations)

29. Kaiser re-alleges and incorporates by reference paragraphs 1 through 28 as though fully set forth herein.

30. Moreover, if QHS attempts to collect payment from Kaiser members for emergency medical services rendered at their facilities, then Kaiser will be irreparably harmed for which there will be no adequate remedy at law.

31. Kaiser is therefore entitled to an order restraining and enjoining QHS from seeking payments from Kaiser members above and in addition to their deductibles and copayments.

COUNT THREE
(Declaratory Relief Regarding Kaiser Obligations)

32. Kaiser re-alleges and incorporates by reference paragraphs 1 through 31 as though fully set forth herein.

33. Facilities that provide non-gratuitous emergency medical services are entitled to recover the reasonable value (*i.e.* the fair market value) of those services. The reasonable value of medical services for commercial members, including emergency medical services, are determined pursuant to equitable *quantum meruit*

34. As of May 31, 2019, contrary to the law, QHS insists on recovering its unilaterally set, full billed charges which exceed the reasonable value of its

services. Given QHS' high charges, Kaiser is informed and believes, and on that basis alleges, that requiring Kaiser to pay QHS' full billed charges instead of the reasonable value for services provided to commercial members would harm Kaiser, and by extension its members, by millions of dollars each year. Kaiser is informed and believes that such amounts already have begun accruing.

35. Accordingly, an actual controversy of sufficient immediacy exists between Kaiser and QHS as to whether Kaiser, and its members, must pay QHS' unilaterally set billed charges without proof that they are the services' reasonable value. Kaiser therefore seeks, and this Court should issue, an order declaring that (1) Kaiser is required to pay only the reasonable value of any emergency services rendered to its commercial members by QHS; (2) the reasonable value of QHS' services to commercial members is determined under *quantum meruit* principles and is not QHS' unilaterally set billed charges; and (3) QHS does not have the right to collect more than the reasonable value of emergency services rendered to Kaiser commercial members during any period for which it and Kaiser do not have a written, express contract for such services.

COUNT FOUR
(Injunctive Relief Regarding Kaiser Obligations)

36. Kaiser re-alleges and incorporates by reference paragraphs 1 through 35 as though fully set forth herein.

37. Moreover, if Kaiser was required to pay QHS' unilaterally set billed charges without proof that they are the services' reasonable value, then Kaiser will be irreparably harmed for which there will be no adequate remedy at law.

38. Kaiser is therefore entitled to an order restraining and enjoining QHS from (1) demanding Kaiser pay more than the reasonable value for its emergency medical services under *quantum meruit* principles and (2) billing Kaiser members any amount, other than their deductible and copayment obligations, for emergency medical services.

PRAAYER

WHEREFORE, Kaiser respectfully prays that the Court:

1. Declare that QHS does not have the right to bill Kaiser members for emergency services, except for copayments and deductibles, and must hold Kaiser members harmless for bills relating to emergency service; and declare further that Kaiser is only required to pay the reasonable value, under *quantum meruit* principles, for emergency services rendered to its commercial members;

2. Enjoin QHS from billing Kaiser members for emergency services, except for copayments and deductibles, and from attempting to collect from Kaiser more than the reasonable value of its emergency services;

3. Award Kaiser all costs and attorneys' fees incurred herein, to the extent permitted by law; and

4. Grant such further and additional relief as the Court may deem just and proper.

DATED: Honolulu, Hawai‘i, June 12, 2019.

/s/ Jordon J. Kimura

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